

STATE OF MICHIGAN
COURT OF APPEALS

DAVID M HUNTER, BRUCE E HUNTER, and
SHLS, LLC,

UNPUBLISHED
June 17, 2014

Plaintiffs-Appellees,
and

SAUX HEAD 3, LLC,

Plaintiff,

v

LUCIAN THOMAS BALDWIN, III,

Defendant-Appellant.

No. 314683
Marquette Circuit Court
LC No. 10-048632-CH

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of the trial court, after a bench trial, determining that plaintiffs held rights to an easement on defendant's property, prohibiting defendant from interfering with easement rights held by plaintiffs for ingress and egress over a portion of property owned by defendant, and permitting plaintiffs to remove, at their own expense, a berm placed within the bounds of the easement. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiffs and defendant own neighboring properties in Marquette County. When defendant acquired his property in 1987, it was burdened by an express easement permitting ingress and egress from County Road KE onto plaintiffs' property. County Road KE runs through defendant's property, and at the easement location the road right-of-way passes within thirty feet of the property line between plaintiffs' and defendant's property. The recorded deed creating the easement states in relevant part:

An easement 66 feet in width for ingress and egress in favor of the above described parcels of land from the "Orchard Gate" Southeasterly to County Road KE in the SW 1/4 of the SW 1/4 of Section 21, T50N, R26W.

Plaintiffs acknowledged at trial that they used an alternate access point, not the easement, as the primary means of accessing their property. However, they noted that it would at least theoretically be a shorter route to access their property over the easement, and doing so would avoid the need to cross a bridge.

In 1997, defendant obtained permission from plaintiffs David and Bruce Hunter's father (who was not an owner of record at the time, having conveyed his interest to a trust for which his sons were trustees) to construct a berm and plant trees that would block travel over the easement by unauthorized persons. Defendant testified that besides someone occasionally walking across the easement, it was not used after he built the berm. However, the Hunter brothers testified that after the berm was built they continued to use the easement for various activities, including walking, running, cycling, skiing, and the operation of all-terrain vehicles and snowmobiles. Defendant claimed there was no contact between the parties regarding the easement until 2007, when plaintiffs sent defendant a letter stating that although they were not currently using the easement, they still had rights to it. Defendant's attorney responded and asserted that the easement was abandoned. Thereafter, plaintiffs filed suit against defendant to determine their rights to the easement.

After a bench trial, the court found that the term "ingress and egress," as used in the easement language, was not limited to vehicular ingress and egress. The court also found that plaintiffs "continue to hold an express easement," and that the easement was not abandoned due to nonuse because plaintiffs had continued to use the property and there had not been evidence of a sufficient act indicating a clear intent to abandon the easement.

II. STANDARD OF REVIEW

"The extent of a party's rights under an easement is a question of fact, and a trial court's determination of those facts is reviewed for clear error." *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005).

III. TERMINATION OF THE EASEMENT

Defendant first argues that the easement was terminated, because the purpose of the easement ceased to exist. An easement is a limited property interest that is generally confined to a specific purpose. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378; 699 NW2d 272 (2005). The purpose of the easement is determined by the text of the easement. *Blackhawk Dev Corp*, 473 Mich at 41-42. If the language establishing the easement is plain, then it must be enforced as written without further inquiry. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). An easement limited to a particular purpose terminates when the "purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment." *Carmody-Lahti Real Estate*, 472 Mich at 381-382 (citations omitted).

Defendant's theory of the case turns on interpreting the easement as being for the purpose of *vehicular* access between County Road KE and plaintiffs' property. Defendant notes that the precise width of the easement, sixty six feet, is consistent with intending the easement to be some kind of road. On plaintiffs' side of the easement either is or was a two-track road, although the testimony differed as to whether that was still passable. Witnesses opined that they would not

want to drive “a BMW” through the easement in its current condition, but several witnesses opined that the right kind of vehicle (even the right kind of BMW) would at least potentially still be able to traverse it. Nonetheless, defendant asserts that because the easement is not practically passable by most ordinary vehicular traffic, its essential purpose has been destroyed, and plaintiffs’ continued “recreational” use of the easement is irrelevant. Defendant also points out that, as noted, plaintiffs do not need the easement to access their property.

We disagree. The plain language of the easement indicates that the purpose of the easement is for ingress and egress from County Road KE onto plaintiffs’ property. It does not say that it can only be used for vehicular ingress and egress,¹ nor does it not say that it will terminate if there is another method of ingress and egress onto the property. In this case, the individual plaintiffs testified that after the berm was built they continued to occasionally use the easement for various recreational activities. Further, a surveyor hired by plaintiffs to survey the easement testified that it was possible, even with the berm, for an individual to “negotiate” the berm and use the easement. Moreover, defendant acknowledged that his agreement with plaintiffs’ father (to build the berm and plant the trees) was designed to prevent other persons from using the easement, to the benefit of both plaintiffs’ and defendant’s parcels. The purpose of the easement is ingress and egress to the road, which still exists. Because the easement’s specific purpose did not cease to exist, the easement did not terminate.

IV. ABANDONMENT OF THE EASEMENT

Defendant also argues that the easement was abandoned. “The essential elements of abandonment are an intent to relinquish the property and acts putting that intention into effect.” *Strong v Detroit & Mackinac R Co*, 167 Mich App 562, 569; 423 NW2d 266 (1988). “Nonuse by itself is insufficient to show abandonment.” *Id.* “Rather, nonuse must be accompanied by some act showing a clear intent to abandon.” *Ludington & Northern R v Epworth Assembly*, 188 Mich App 25, 33; 468 NW2d 884 (1991).

In this case, the trial court found that the easement was used before the berm was constructed and continued to be sporadically used after it was constructed. This finding was not clearly erroneous. Plaintiffs’ continuing use of the easement is evidence of an intent to maintain, not abandon, the easement. Defendant asserts that the permission he was granted to construct the berm and plant trees in the area constituted an affirmative act showing a clear intent to abandon when coupled with the nonuse of the easement. However, again, plaintiffs’ use of the easement *after* the berm was built and the trees planted contradicts defendant’s claim. Additionally, *plaintiffs* took no affirmative action to render the easement unusable. Cf. *Carr v Bartell*, 305 Mich 317, 322; 9 NW2d 556 (1943) and *Bricault v Cavanaugh*, 261 Mich 70, 73; 245 NW 573 (1932) (easement abandoned when easement holders erected a permanent obstruction to the easement). Defendant points out, we believe correctly, that the holder of an easement need not

¹ Moreover, the terms “ingress” and “egress” are generally understood to be broad in scope. “Ingress” is defined as “[t]he act of entering” or the “right or ability to enter.” Black’s Law Dictionary (8th ed). “Egress” is defined as the “act of going out or leaving” or the “right or ability to leave; a way of exit.” Black’s Law Dictionary (8th ed).

necessarily perform such affirmative action (or “move the dirt”) personally; such a holder could conceivably hire a contractor or otherwise take action through an agent. However, defendant did not erect the berm at the direction of any person who had an ownership interest in the easement at the time. Equally significantly, we find no clear error in the trial court’s conclusion that the evidence showed that plaintiffs’ father permitted the erection of the berm but did not direct defendant to do so; therefore, even if plaintiff’s father had been the easement holder at the time, defendant was not acting as his agent.

Accordingly, the trial court did not clearly err in finding that the easement was not terminated or abandoned, and in prohibiting defendant from interfering with plaintiffs’ easement rights.

Affirmed.

/s/ Jane M. Beckering
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra